IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL REVISION APPLICATION NO. 54 OF 2002.

Shri Ghanashyam Venkatesh Shirodkar,
on behalf of himself and Shree
Somnath Devasthan Committee,
having its office at H. No. 502,
Bhouta Vaddo, Assagao, Bardez Goa. ... Applicant.

Versus

Communidade of Assagao through
its Attorney Mr. Michael Andrade,
having its office behind Assagao
Church, Khursa Vaddo, Assagao. ... Respondent.

Mr. Arun Bras de Sa, Advocate for the Applicant.

Mr. V. Menezes, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 16th March 2002.

ORAL JUDGMENT.

By consent of the parties, this Civil Revision Application is taken up for final hearing. Rule. Rule made returnable forthwith.

2. The revision application is against the Order passed by the Additional District Judge, Mapusa, dated 5th October 2001, in Miscellaneous Civil Appeal No. 25 of 2000, on Exhibit 8, an application moved by the present applicant/respondent, in substance praying for addition of one Shri Pramod Bhalchandra Walke as a party to the Appeal on the ground that the said Shri Pramod Bhalchandra Walke had been elected as the President of the Somnath Devasthan Committee in the meeting of the Devasthan Committee held on 13th August

2000, due to the resignation of the present applicant from the post of President of the said Devasthan Committee.

3. The learned Additional District Judge, Mapusa, according to me, very rightly, dismissed the application on the ground that there was no material on record to substantiate the claim of the applicant/respondent that he had resigned from the post of President of the Devasthan Committee. The learned Additional District Judge, Mapusa, also rejected the prayer under Order I, Rule 8(5) of the Code of Civil Procedure on the ground that there was nothing to indicate that the present applicant/respondent had not been pursuing the matter diligently thereby inviting an Order from the Court under Order I, Rule 8(5) of the Code of Civil Procedure.

4. Mr. Arun Bras de Sa, the learned counsel appearing for the applicant, has urged before me that the application, Exhibit 8, filed before the Additional District Judge, Mapusa, in fact does not truly reflect the prayer that was sought to be urged. The contention of the applicant/respondent is not that his name be deleted but that the name of Shri Pramod Bhalchandra Walke be added as the respondent to the Appeal, which is pending before the Additional District Judge,

Mapusa, as the said Shri Pramod Bhalchandra Walke has now been elected as the President of the Devasthan Committee on account of the resignation of the present applicant/respondent. According to the learned counsel appearing for the applicant, the presence of Shri Pramod Bhalchandra Walke as a party respondent in the appeal is essential for a just decision of the Miscellaneous Civil Appeal pending before the Additional District Judge, Mapusa. He very candidly admitted that unfortunately no documents supporting the contention of the applicant/respondent had been filed. He further states that the applicant/respondent is in possession of sufficient material which could be produced before the Court to enable the Court to pass appropriate Orders.

5. Mr. Valmiki Menezes, the learned counsel appearing for the respondent herein/appellant before the Additional District Judge, Mapusa, has invited my attention to the interim Order which is passed by the learned trial Court and which is the subject matter of challenge in appeal before the learned Additional District judge, Mapusa. Mr. Menezes, the learned counsel appearing for the respondent herein, has submitted that the suit was filed by the present applicant/respondent in his personal capacity and in the capacity as representative of the Shree Somnath

Devasthan Committee. It is urged before me that the Order of the trial Court injuncts the present applicant/respondent in his personal capacity as well as a representative of the Shree Somnath Devasthan Committee. In such circumstances, the presence of the appellant before the appellate Court while deciding the appeal is essential as the deletion of the name of the present applicant/respondent would frustrate the very object of filing of the appeal, which is pending before the appellate Court.

6. According to me, the presence of Pramod Bhalchandra Walke as a party respondent is essential for the just decision of the appeal, since it is contended before me that Shri Pramod Bhalchandra Walke has now been elected as the President and his presence before the appellate Court is essential to safeguard the interest of the Devasthan. This observation is made by me on the basis of what is submitted before me. The present applicant/respondent is, therefore, at liberty to file an application, both, in the trial Court as well as before the appellate Court for joining Pramod Bhalchandra Walke as a party to the proceedings. Both the Courts below are at liberty to arrive at a finding whether Shri Pramod Bhalchandra Walke has or has not been elected as the President of the Devasthan Committee on account of the resignation of the present

applicant/respondent on the production of supporting documents and then to decide the necessity of Shri Pramod Bhalchandra Walke as party to the proceedings. Any observation made by me in this behalf shall be ignored by the Courts below while deciding the applications which are filed by the present applicant/respondent.

7. With these observations the Civil Revision Application is, accordingly, disposed of with no order as to costs. Rule stands discharged, accordingly.

(P. V. HARDAS)
JUDGE.

ed's.